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THE GAS SUPPLY OF BOSTON.

III.

IN the preceding article * I set forth the brilliant financial success of the Bay State Company, and intimated that so great a success must invite attacks along at least two distinct lines. In the first place, in view of the strenuous efforts for years to regulate the companies in the interest of the public, such a career as that of the Bay State Company was likely to create a demand for increased legislative and administrative control over the companies. In the next place, it was almost certain to bring about attempts on the part of investors to wrest some of the large gains of this field from the Bay State Company by means of competition.

The relation of one of these possible attacks to the other would be affected by the particular circumstances at the time, and partially, also, by the character and temperament of the persons leading the attack. As it happened, the political conditions in 1892-93 invited an attack. A small group of well-educated, intelligent, and ambitious young men then completely controlled the Democratic party in Massachusetts. In January, 1893, one of these entered upon his third term as governor of the State; a second, Nathan Matthews, Jr., began his third term as mayor of Boston; while a third held a high federal office at Washington. The Democratic party was in high hopes of continuing and extending its power in the State. In that case, Mayor Matthews was looked upon as the logical successor of Governor Russell. It would have been strange, therefore, if so keen a political leader had not been on the lookout for an opportunity to show himself a defender of the rights of the people. The

* Published in this Journal for October, 1898.

preceding narrative will have made it clear what an opportunity the gas situation in Boston offered at this time for a striking political move.

The particular occasion for action came from the fact that the five-year contracts for the public lighting were to expire July 1, 1893. In addition the amendment of the city charter in 1885 largely centralized power in the hands of the mayor. Mayor Matthews interpreted this concentration of power to extend to the right of inducing competition in the Boston gas field without the consent of the board of aldermen. Political conditions and legal technicalities have prevented a judicial determination of this doubtful point. As the sequel will show, competition was actually introduced in this way. It is plain that, if the mayor could maintain his view (as he proved able to do), nothing but a sense of financial danger on the part of the Brookline Company would prevent him from getting that company to precipitate a great gas war by paralleling the pipes of the Bay State Companies.

The Brookline Company was the only one both physically and legally in a position to be used for such a purpose. The town of Brookline is almost completely surrounded by Boston. This company under its special charter, as amended from time to time,* had the right to lay pipes in the city of Boston with the consent of the proper local authorities. At the beginning of 1893 it was the only company operating in the town of Brookline and in those portions of Boston which, before annexation,† had constituted the town of Brighton and part of the town of Brookline, as well as in a small portion of the Back Bay District of Boston. Since 1873 it had furnished some public lights in Boston, and since 1875 all the public gas lights in the territory traversed by its

* Acts of 1853, c. 17; of 1854, c. 104; of 1860, c. 151; and of 1870, c. 180.

† Brighton was annexed in 1874 (Acts of 1873, c. 303), and portions of Brookline at two different times (Acts of 1870 and 1874.)

pipes. The contracts for this public lighting had been expressly authorized by the Boston board of aldermen.

As already indicated, all the companies of the Bay State group, and also the Brookline Company, had, with the consent of the mayor and aldermen, obtained the right to enter Boston and to occupy certain designated streets, or, as in the case of the Bay State Company, all the streets of the city. Before 1885 gas pipes were laid in Boston by companies already admitted to the city without any permit of the superintendent of streets; but since 1885 streets had been opened by the lighting companies only under written permits from that officer, designating the particular streets to be opened.

The act of 1854, by which the Brookline Company first entered Boston and Roxbury (not then annexed), gave the company specific authority to lay pipes in any parts of these cities, with the consent of the mayor and aldermen in each case. By this act the mayor and aldermen of each city were given the right "to regulate, restrict, and control the acts and doings of said company, which may in any manner affect the health, safety, or convenience of the inhabitants." By a later statute, enacted under the reservation in 1830 of the right to repeal charters, all gas companies chartered by special act since that date are made subject to the general laws. The general incorporation law (Acts of 1870, c. 55, § 56) authorizes any gas company to dig up and open streets with the consent of the mayor and aldermen, *so far as is necessary to accomplish the objects of the corporation*. By § 57 of this act the mayor and aldermen of any place in which the pipes or conductors of such corporation are sunk are given the same right of regulation and control over the corporation as the mayor and aldermen of Boston and Roxbury were given over the Brookline Company in the provision quoted above.

To add to the confusion already existing, the act

amending the charter of Boston* provided that the executive powers heretofore vested in the board of aldermen should be vested in the mayor, to be exercised by him through the several officers and boards of the city; and it prohibited, in express language, the board of aldermen from taking part, "directly or indirectly," in the conduct of any of the executive or administrative business of the city. In 1892 the ordinances of the city underwent a complete revision. There is no reason to suppose that the revisers had specifically in view the gas situation, with the impending conflict. Yet the revision, made under the direction of Mayor Matthews, accentuated the characteristic features of the charter amendment of 1885, concentrating power in the hands of the mayor. Three sections of the revised ordinances deal chiefly with the powers of the superintendent of streets in regard to laying gas pipes and similar conductors. The first † authorizes him to issue permits to open the streets "to persons having authority in the premises." The second provides that such permits shall be subject to all the terms, limitations, and conditions stated in the ordinances of the city, and also "to any permission, control, regulation, obstruction, or revocation which the board of aldermen may make." The third provides that he shall issue such permits "when authorized thereto" by an order of the board of aldermen.

As if the situation were not confused enough already, the act of 1885 creating the Gas Commission, one of the chief objects of which was to prevent competition, provided that

in any city or town in which a gas company exists in active operation, no other gas company, nor any other persons, shall dig up and open the streets, lanes, and highways of such city or town for the purposes of laying gas pipes therein, without the consent of the mayor and aldermen or selectmen of such city or town, after a public

* Acts of 1885, c. 266, §§ 6 and 12. † C. 36, § 8; c. 5, § 1; c. 36, § 14.

hearing . . . and notice to all persons interested, by publication, or otherwise.

Another section of the same act gives the right to any person aggrieved to appeal from such decision of the mayor and board of aldermen to the board of gas commissioners.

Evidently, the question by whose authority the Brookline Company might compete with other companies in Boston was a very doubtful and a highly complex one. The doubts did not seem, however, to appall the mayor of Boston, who settled them, temporarily at least, in his own way, and admitted the Brookline Company as a competitor by the mere permit of his superintendent of streets.

I called attention in an earlier part of this discussion to the fact that the progress of science opened the way for the Bay State Company to get into Boston, under the plea of cheaper gas by means of the new process for making water gas instead of coal gas. The moment water gas was seen to be the successful rival of coal gas, it also became clear that the degree of saving by the change depended in large measure on the price of naphtha, which is required in large quantities to enrich water gas. But the Standard Oil Company has had for years a virtual monopoly* of the naphtha market of the United States. The development of the water gas industry offered, therefore, a large and tempting new field of investment for persons connected with that company, placing them in a position to bring pressure to bear on the owners of water gas plants everywhere to sell out. The history of the gas industry for the last dozen years shows that those interested in the Standard Oil Company were quick to take

* It is true that, during the years of conflict, the companies in which Mr. Addicks was interested bought their naphtha, for the most part, from another oil company. It was probably this demand alone that kept that company going. It is perhaps needless to suggest that the difficulties of procuring naphtha placed the Addicks companies at a disadvantage.

advantage of the situation. One by one, many of the larger gas companies of the country have passed into the control of persons closely connected with the oil monopoly.

It would be strange if this freezing-out process had not at certain points met with violent and bitter opposition. One of the most severe struggles of this kind took place in Brooklyn, New York. For months before the period of which I am now writing, a desperate gas fight had been going on there with the interests represented by Mr. Addicks of the Bay State Companies. The same parties were in conflict in Buffalo; and Mr. Addicks had just retired from still another field, Chicago, very much richer than when he went in. Such conflicts never fail to engender keen business and personal animosities. To one conversant with the business methods of the Standard Oil magnates, it need scarcely be said that, if occasion offered, they would not be slow to strike a blow at Mr. Addicks, and notably in his stronghold, Boston,* where circumstances were fast making his position untenable even without such a direct attack.

The special report presented by the Gas Commission, March, 1892, declaring that gas could be furnished in Boston proper for \$1 per 1,000 feet at a profit, not only called attention to the richness of the field, but also furnished the basis for increasing public hostility against the Bay State interests, and opened the way for attacks from various sources. The first persons to take advantage of this situation were the large consumers, mainly hotel keepers, who had been deprived in 1891 and 1892 of the special discounts to which they had become accustomed. These formed an association, and raised funds to pay counsel to prosecute a petition before the Gas Commission for dollar gas. This petition was presented on June 4, 1892; but after several public hearings the

* Cf. *Investigations of 1893*, pp. 314 and 365.

case was compromised. The company agreed: (1) to furnish gas of 25 candle power; (2) to sell to large consumers for \$1.20 per 1,000 feet for illuminating purposes; and, finally, (3) to furnish to all consumers, through an independent, rent-free meter, gas for other than illuminating purposes at \$1 per 1,000 feet.*

The vigorous and aggressive young mayor did not appear publicly in the struggle until the beginning of his third term and the meeting of the legislature, early in January, 1893. But as early as June, 1892, the *Boston Post*, at that time a leading Democratic paper of New England and the recognized organ of the city administration, began a violent and persistent attack on the Bay State Gas interests. The two chief cries were, "Down with the Gas Trust!" and "Give us dollar gas." The mayor in his inaugural address, January 2, 1893, gave first place to public lighting; recommended a reduction of \$65,000 in the annual appropriation for the lamp department; and, to use his own words, gave notice "that the gas companies must come down."† The demand was abrupt; and the mayor testified later that he had conferred neither with the old company nor with any prospective competitor, and indeed had not previously given thought to the gas situation. This neglect is difficult to understand, in view of his two years of public service and of the constant discussions in the newspapers and in the Gas Commission reports. At all events, not till after this first move, did he make any attempt to consult with the gas companies. On January 27 he made a request to see the president of the gas company.‡ A subordinate who came to see him (the president being absent from the city) was informed that the mayor wished to confer with the president, if he was prepared to make a reduction in the price of gas; other-

* *Eighth Annual Report of the Gas Commission* (1893), pp. 13, 14.

† *Investigation of* 1893, p. 384.

‡ *Ibid.*, p. 360.

wise, "he need not come." This ended all attempts to come to terms with the Bay State interests. On January 31 the reduced appropriations passed the councils, and in due time received the approval of the mayor.

From that time the fight for dollar gas to private consumers, with a great reduction in price for the public lighting, was recognized as the mayor's fight. On January 30 he sent an official petition to the legislature. In this he set forth that Boston paid more for its public lighting than any other large city in the country; that it could not charge rent for the use of the streets, nor collect proper damages for injuries to the streets nor adequate taxes upon the capital of the companies; and that by the municipal lighting act of 1891 the city was deprived of the right to construct its own lighting plants, and, in general, that under existing laws the city could not obtain light at reasonable prices. He prayed relief from each and all of these evils, and presented seven separate bills designed to remedy them. These and many similar bills, some of which bore the name of the mayor and some not, were energetically pushed by him and his friends throughout the session, until the desired end was accomplished.

To leave no stone unturned, the mayor, on February 3, filed three separate petitions with the Gas Commission. The first set forth that the Bay State Company sold gas to the companies under its control at an unreasonably high price, and asked the board to order the price reduced. The second stated that all the companies in the Bay State group were virtually one company, and asked the board, on the strength of its own findings in the special report of 1892, to order the price of gas of all these companies reduced to \$1 for private consumers, and 80 cents for the city of Boston. The third asked, separately, that the Boston Company be ordered to sell gas to the city at 80 cents, and to private consumers at \$1.

The requests for a reduction of price for gas for public

lighting in the case of all the companies was afterwards waived by the petitioners and not considered by the board. Separate hearings were held on the petitions against the Boston Company. But little new evidence was offered in either case, the petitioners resting their claim and arguing their case almost entirely on the basis of the facts and conclusions of the report of 1892. In regard to the case of the Boston Company the commission remarks,* "at the hearings an effort was made by the company to control in some measure the facts and conclusions of the report, but, in the opinion of the board, without success," and adds that later reports of the company made to the board "give no reason for a modification of the conclusions of that report."

On February 14 the board voted to advertise the necessary hearings on the petitions against the Boston Company for March 7. The hearings were begun on that day, and by agreement of counsel, continued until March 21; and then, not being completed, they were still further continued until the 23d, when they were closed. The board then took the case under advisement, and on Saturday, the 15th of April, near the close of office hours, voted to recommend that after May 1, 1893, the price charged by the Boston Company be not more than \$1† per 1,000 feet, net. The following Monday morning, before notice to the company, but after the decision had in some way become known to the public, upon its own initiative the board reopened the case, and amended this vote by striking out the word *net*. Neither the reasons for the adjournment of the hearing from March 21 to March 23 nor for amending this vote are matters of rec-

* *Ninth Annual Report* (1894), p. 12.

† This recommendation was formally accepted by the company April 22; and Boston had dollar gas, but no peace. The cases of the minor companies were not decided until June 6, when the outcome of the main agitation was reasonably certain. The commission reduced the price for the Roxbury Company to \$1.20 and for the Dorchester and South Boston Companies to \$1.30 per 1,000 feet, net, after July 1, 1893.

ord. It goes without saying that the amended vote was less favorable to the company than the original one. On February 8, the corporation counsel of Boston had addressed a request to the commission for an early hearing on the mayor's petitions. The fact that no action was taken on the petitions until eleven days after they were filed, that the commission gave three weeks' notice of the hearings instead of the minimum notice of two weeks, and that, in all, it took about ten weeks to dispose of this important case, was made the occasion of violent and bitter attacks, not only on the integrity of the members of the board, but even on the very life of the commission itself.

In fact, before this time the agitation had become so powerful as to affect the most conservative elements of the community, and, notably, the most staid of the newspapers, which declared that the Gas Commission, having all the facts in its possession, was delaying matters voluntarily. But, in spite of the agitation, the commission could not order a reduction of price except on petition; and this was the first petition of the kind it had had an opportunity to act upon. Furthermore, it could not, as the public was made to believe, even upon petition order a reduction in price upon the basis of its own *ex parte* findings in the special report of the year before. The law required that the company be given an opportunity to be heard. The time taken to try and to dispose of a case of this magnitude was not excessive, nor would it have been so considered in any ordinary condition of the public mind.

But, even before the petitions had been filed with the commission, the main fight had been transferred to the legislature. All sorts of bills hostile to the companies had been introduced, including a bill for the forfeiture of the charters of all the Bay State Companies, unless they cut themselves off entirely within six months from

any connection with extra-state corporations. Several of these bills were well advanced, and public hearings on at least eight of the mayor's bills were announced before March 14.

Mayor Matthews, however, had no intention of stopping with appeals to the legislature and the Gas Commission. Early in February, while his petitions before both these bodies were still pending, he entered into negotiations with the president of the Brookline Company with a view to persuading him to compete with the Bay State Companies, on the basis of \$1 per 1,000 feet to private consumers, and a figure not specifically discussed, but lower than this, for the public lighting. The willingness of his company to compete on this basis was signified, provided that the city were districted for the purpose in a way advantageous to the company; and it was stated that one of the magnates of the Standard Oil Company was ready to back the Brookline Company in such an enterprise.*

On February 13 advertisements for the public lighting of Boston were published in both the New York and the Boston papers. Bidders were "requested to state the price per thousand cubic feet at which they will furnish gas to others than the city." The exact boundaries

*It is impossible to say at just what date the Standard Oil interests acquired control of this company. On June 30, 1892, five-sixths of the stock was held in Massachusetts; while one year later four-fifths of it was held outside the State. Negotiations for the control began on January 13, 1893, by an offer to retain the president of the company in office at an increase of 50 per cent. in salary, without asking anything from him in return. On February 13 it was rumored that the control had actually passed. On the 26th the Standard Oil people appeared at the conference with the mayor, as chief owners. The transfer books show that on April 28 Mr. H. H. Rogers and three of his friends owned 4,574 out of a total of 7,500 shares. Of course, they may have controlled the situation much earlier by options on the stock. Some years before, the stock of this company had been offered to Mr. Addicks *en bloc* at \$115 per share. The new owners bought it piecemeal, at \$116, for the specific purposes of the contest.

For the methods and motives of the different parties for entering upon and bringing about this competition, see *Investigation of 1893*, pp. 312, 324, 363-365, 377, 419, and 428, and Appendix, p. 145.

suggested by the president of the Brookline Company were not followed, but bids for each of nine separate districts bounded by arbitrary lines were called for. Two of the districts covered the territory of the Boston Company, while four more consisted for the most part of regions served by the minor companies of the Bay State group. One district (number 5) consisted wholly of Brighton, served exclusively by the Brookline Company. This division into districts made it possible for the Brookline Company to bring in all the evils and reap any possible benefits from competition, without going to the expense and incurring the risk of piping the whole city. The Brookline Company, as a matter of fact, put in bids for the Brighton District at \$1.25 per 1,000 feet for public use and \$1.50 per 1,000 feet to private consumers; and for districts numbered 2 and 3, city proper, south part, and the Roxbury District (consisting of the richer portions of the territory served by the Roxbury Company), the prices were: for the city, 70 cents per 1,000 feet; and for private consumers, \$1. While not putting in formal bids for other districts, the company gave notice, with its bids, that, if the city wished, it would include at the rates of 70 cents and \$1 (as soon as pipes could be laid) all the territory served by the Bay State Companies with the exception of a district made up of the poorer portions of the territory of the Roxbury Company and of the territory served by the little Jamaica Plain Company. No reference was made in the bids to districts numbered 7 and 9, consisting entirely of East Boston and Charlestown, since nature had made these districts difficult of access for the Brookline Company.

The companies in the Bay State group put in separate bids, but only as a matter of form* and as a basis for

* It is probable that these companies would have put in serious bids at reduced prices, even at a great sacrifice, had they not been advised that they could keep all competing companies out by existing legal means. As will be shown later, after exhausting every possible legal resource, they had to submit

future argument; for they ignored entirely the districts as marked out in the advertisements, making the bid of each company cover the territory already supplied by it, and made no reference to anything but public lighting. With each bid they gave an alternative by which the company should assume entire charge of caring for, lighting, and extinguishing the public lamps. This would have enabled the city virtually to abolish its lamp department, which cost the city at that time about \$50,000 annually. Mayor Matthews admitted* that this department cost Boston more than twice as much per lamp as other cities paid private corporations to do the same work, and that Boston was about the only large city that did the work under public direction. But he defended the maintenance of the department on administrative grounds, irrespective of expense, and was publicly charged† with maintaining it at the expense of the city, "to save for himself one hundred thirty odd political votes."

The bids were opened on Friday, the 24th of February. The contracts with the Brookline Company were drawn the next day, and on Sunday, the 26th, submitted to the mayor. Not satisfied with the surplus earnings clause, he asked for and obtained a conference‡ the same evening with the representatives of the company. The terms of the contract were agreed upon at this conference, and the contracts signed the following day, February 27, 1893.

The contract covered only the three districts for which

to the competition of the Brookline Company. The area of competition constantly spread, until in June, 1895, the Brookline Company supplied gas in every part of Boston except East Boston, Charlestown, and Jamaica Plain.

* *Investigation of 1893*, p. 394.

† *Ibid.*, p. 342.

‡ According to the testimony of the mayor, he first consulted with representatives of the Standard Oil interests in regard to gas matters at this meeting, where they appeared as actual owners of the Brookline Company. Circumstances would seem to indicate that he counted on their support at a much earlier date, although he may not have consulted them personally. *Investigation of 1893*, p. 362.

the company put in formal bids,—namely, Brighton (non-competitive), city proper (south part), and the Roxbury District,—and at the respective prices named in the bids. The term of the contract was fixed at three years from July 2, 1893 (subject to annual appropriations); but it was to continue at the same prices, at the option of the city, until abrogated by the written notice of the superintendent of streets, with the approval of the mayor. The company agreed to connect its pipes with the existing public lamps without expense to the city. The contract forbade the company to disturb any asphalt, stone, or brick pavement with concrete foundations, and bound it to make all needed repairs on streets within a year after opening them, provided that the defects, in the opinion of the superintendent of streets, were due to the action of the company. The expense of laying and keeping in repair any additional service pipes fell upon the city. The city had also to bear half the expense of removing and cleaning the burners once a year.

This is probably the first American contract for public lighting which binds the company to fixed prices to private consumers. It is also one of the first contracts under which gas sold to the city by meter for purposes other than street lamps is charged at as low a price as the gas for street lamps. Before this Boston had paid annually from \$30,000 to \$40,000 per year for gas for public buildings at the rates paid by private consumers. The mayor took great pride in both these provisions. It was, however, article 14 of the contract for which he took the greatest credit. This provided that the company should pay to the city each year one-half of its net earnings “after paying an annual profit of 8 per cent. on the actual money invested in that year *in its gas plant*,* which amount at present is taken to be one million dollars, *provided* that said profits shall be reckoned as cumulative from the date hereof.” The article is vaguely

* The italics are not in the original.

phrased, and is practically meaningless, especially in view of the other conditions of the contract; and nothing has ever come of it.

Some figures and facts in regard to the history and operation of the Brookline Company should be given to show the remarkable character of this contract. The company had recently reduced its price, and was selling 65,000,000 feet of gas annually at \$1.90 net per 1,000, with a manufacturing and distributing cost (apart, of course, from anything for dividends and interest) of \$1.138 per 1,000 feet. It supplied a residence district so sparsely settled that, with half the length of street mains of the Boston Company, it sold less than one-twentieth as much gas, the sales per mile of main being in the one case 880,000 feet, in the other 10,406,000 feet. The Brookline Company was paying 7 per cent. dividends on a share capital of \$500,000, and carrying a debt of \$564,000 at an average rate of about 5 per cent. interest. At first blush, it would appear that the outcome of a struggle between such a company and as strong a combination as that controlled by Mr. Addicks could not be doubtful. But, if we go a little more deeply into the character and motives of the owners of the Brookline Company, the issue is not so certain.

The real significance of the invasion of the Boston field was brought out by the Gas Commission itself in a decision which, though made some months later, may be referred to at this point. It was inevitable that the contract should get the company into trouble with its customers, both public and private, in the non-competitive part of its territory. On the very day the contract was signed the company gave notice that it would reduce its prices in Brookline to the level charged in the Brighton District under the contract (\$1.50 for private consumers); yet petitions were filed almost immediately with the Gas Commission, asking that prices in Brookline and Brighton

be reduced to the level of those charged in Boston proper. On August 3, 1893, the board fixed \$1.40 as the maximum net price to be charged by the company in any portion of its territory. It found, among other things, that the cost of the company for management and leakage was high, and that it "had apparently been burdened through a considerable portion of its history by a lack of economy in its management." \$1 per 1,000 feet was declared to be less than actual cost, leaving nothing for dividends and interest. On the question whether the Boston contract gave evidence that the company could sell gas profitably at any such price, the commission remarked that "it is well understood that, in the management of corporate enterprises at the present day, profits are often made by parties interested in other ways than directly, by the sale of their products in the open market"; and, again, that "the only fair inference to be drawn from the position of this company in this contract in respect to price is simply that the shareholders, or a majority of them, are willing to enter upon an experiment which they expect will, in some way, that will not appear on the face of the transaction, indirectly become profitable to them."* Could the commission have made it clearer that, in its opinion, the object of the Brookline Company was not to make money by selling gas, but to gobble up the Bay State Companies?

The very day the contract with the Brookline Company was signed the mayor sent a special message,† with a copy of the contract, to the council, stating that the necessary permits to open the streets had already been given to the Brookline Company. The message began with the statement that "the desire‡ of the people for

* This decision was rendered after the legislature had adjourned, and the public agitation had ceased. *Ninth Annual Report*, pp. 29, 30.

† *Boston City Document* No. 65, 1893.

‡ The people of Boston may have been consumed by a desire for dollar gas, but their desire had never been ardent enough to induce them to push a peti-

dollar gas is about to be realized, at least so far as certain sections of the city are concerned," and went on to state that the signing of this contract was conclusive evidence that the other companies could furnish gas at the same prices with a profit. It demanded that the Gas Commission no longer hesitate to order reductions elsewhere, and closed with the warning that the possibility of getting as good terms from the other companies "will depend largely upon the support given by the public to the lamp department and the mayor." The activity of the mayor was marvellous. Within a period of about a week he argued the petition against the Boston Company before the Gas Commission; made another argument before the same board in opposition to the appeal of the Boston Company, against the right of the Brookline Company to lay pipes in Boston without the consent of the board of aldermen; and had an order passed through the House of Representatives, on March 28, for a thorough investigation of the whole history, life, and relations of all the Bay State companies by a special committee of the House.

This investigation, although nominally under the auspices of the legislature, was in reality a move on the part of the mayor of Boston. He alone, therefore, unless the thing were to become a farce, had to raise the money necessary to pay counsel and expert witnesses, and to defray many incidental expenses. On April 3, two days before the investigation began, the board of aldermen, by a vote of 9 to 3, refused to concur in a vote of the common council appropriating public money to pay the expenses of this "prosecution." * The next day the mayor asked Mr. George Fred Williams—one of the party

tion for that purpose before the Gas Commission, which (deprived of the right of initiative in such cases) had full power, after such a petition, to procure dollar gas, and which had committed itself on the point nearly a year before.

* Mayor Matthews has always insisted that, in essence, this was not an "investigation," but a "prosecution" of the Bay State Company for the forfeiture of its charter.

leaders referred to in the beginning of this article — to act as voluntary counsel without any guarantee of pay. The mayor (although summoned as one of the chief witnesses by the companies) acted as chief counsel for the prosecution; while Mr. Williams, yielding to his entreaties, acted as junior counsel. Mr. Williams stated to the committee that he acted without any assurance of pay, but that he expected compensation from the city. It was repeatedly said during the investigation that interested parties would meet the whole expense of the investigation, so far as the city failed to appropriate money for the purpose.*

This investigation occupied the chief place in the public press and in the public mind from April 5 to May 23, when the report was made. The committee, which had all the powers of the legislature to compel the attendance of witnesses and the production of books and papers, made the most thorough legislative investigation ever made in America into any industrial enterprise. I account for this from the fact that so much accurate scientific material was on record with the gas commissioners that any attempt to conceal anything else would have been useless, even though successful. The committee is supposed to have got at the intimate history of all the extra-Massachusetts Bay State enterprises with a single exception; namely, the history of the Beacon Construction Company. For some reason the representatives of the companies, while voluntarily furnishing apparently everything else desired, persistently refused to reveal the doings of this company, which built the works of the Bay State Company in Boston.

The method of conducting the investigation was, for a legislative committee, very formal, though, of necessity,

* Cf. *Investigation of 1893*, p. 314. It appears, however, that on May 19, 1893, Mr. Williams, in the name of his law firm, drew from the city treasury for services and expenses in this case \$5,205.96. I have been unable to find a record of any appropriation for this purpose; nor do I know on what authority the money was paid, or against what fund it was charged.

it lacked the rigidity of strictly judicial procedure. The companies undertook to introduce but little evidence, resting their case rather on the supposed legality of the facts produced by the other side. The "prosecution" had to depend largely on the official information in the hands of the Gas Commission. When either side wanted to introduce anything in evidence, it got it before a public session of the committee and into the hands of the reporters before the committee decided on its admissibility. The question of whether or not it was admitted as evidence after that was unimportant, since the final issue here depended on popular opinion as expressed by the legislature. The committee itself was influenced quite as much by what was ruled out as by what was admitted. In addition to the report of the committee, which, together with the testimony, made a printed volume of more than one thousand pages, Mayor Matthews published a large pamphlet of the proceedings before the committee, consisting largely of matter excluded by the committee.

The most hotly contested point, and the one of the most far-reaching consequence, was whether or not the sworn returns of the companies in possession of the Gas Commission were public records, and consequently open to the public. There was no question of the right of the committee and counsel, on both sides, to have the information contained in these returns; but the commission, in accordance with the opinion of the attorney-general, had always considered these reports as containing the business secrets of the companies, which were given to the commission to enable it to perform its official duty, and had not opened the individual returns indiscriminately to the public. Counsel for the prosecution declared the returns public records, and from the beginning evinced a determination to place them at the disposal of the press.

This divergence of view produced constant friction between counsel and the gas commissioners, finally cul-

minating in the refusal of Mr. Barker, the senior member of the commission, to allow Mr. Williams access to certain elaborate calculations on the cost of making gas. These calculations, made by the commissioners themselves after the returns came in from the companies, were recorded on a page in the return especially prepared for that purpose. When the matter came to an issue, Mr. Barker removed from a certain return the leaf containing these calculations before handing the return over to Mr. Williams. Mr. Barker was at once accused of mutilating a public record to protect the Gas Trust. The *Post* had for months before this demanded the abolition of the commission or the dismissal of the commissioners. All the other papers, except the one owned by the gas interests and the *Journal* (which published nothing during all these months except the speech of the counsel for the company in full, at advertising rates), joined now in the attack on the commission. So violent were the attacks that it looked for a time as if popular opinion might destroy the commission. Yet the charges were without foundation. The returns made to the commission were not public records: still less was the leaf in question. The essential fact in regard to the Bay State companies (the existence of the obligation for \$4,500,000) had been given to the public by the commission itself; and its own special report of the preceding year was the first document in which dollar gas had been declared to be possible.

Under all the circumstances, it was scarcely to be expected that the committee would reach unanimous conclusions. The report (presented on May 23) was signed by seven members; while one minority report bore six signatures, and another a single name. The facts as found by the committee were substantially those given in this series of articles. In the light of the conditions under which the investigation was carried on, it is remarkable that no attempt was made by the committee to distort,

exaggerate, or conceal any important facts. The conclusions were that there had probably been no violation whatever of law. In the opinion of the committee, while the extra-state capitalization depending on the Massachusetts companies exceeded the value of the property by from \$5,000,000 to \$6,000,000, the dividends of the domestic corporations did not amount to more than 8 per cent. on the value (not the cost) of the property. The report upheld the legality of the obligation for \$4,500,000 on the ground that it was issued with the consent of all the stockholders, with no creditors to be defrauded and without violating any statute.* The committee was expressly ordered to report upon the question whether or not any of the charters ought to be revoked. With the view of the facts and the law set forth above, of course, it reported against the forfeiture of any charter.

The majority of the committee made a few general recommendations as to the power of the Gas Commission, the publicity of its records and computations, the future issue of securities only for full value, and the like. The minority reports made some similar recommendations of a general sort, but urged specifically that the obligation for \$4,500,000 be wiped out. No bills accompanied any of the reports.

By the time the reports of the investigating committee were submitted, the session was drawing to a close. If any bills were to be put through, efforts must be speedily concentrated. One introduced by Mr. Lyford (of the committee) was rushed through both houses, with a narrow majority in the Senate, and became law on June 10. It revoked the charter of the Bay State Company, unless it should cancel the obligation for \$4,500,000 within six

*The committee makes the following comment on this point: "It may, perhaps, truly be said that to give this obligation of \$4,500,000 and \$450,000 in cash by the Bay State Company, for its plant costing not less than \$750,000 to \$1,000,000, was a dear bargain, an unconscionable trade, a usurious contract; but who shall say that they had not the legal right to enter into such a bargain, and who can take exception thereto?" *Report*, p. 5.

months without incurring new obligations, save that additional share capital might be issued to such an amount as would not make the total liabilities of the company exceed the actual value of its property, as judicially determined.* As previously explained, this was found to be \$2,000,000; and the company issued \$1,500,000 of additional shares, and cancelled the obligation November 24, 1893. It was on the basis of this new issue of stock that the last batch of Boston United Gas Bonds was put out. In a previous article I stated that this issue of bonds amounted to \$1,000,000. It is extremely hard to follow the transactions of the extra-Massachusetts Bay State Companies. I have reason to believe, however, that, of the last \$2,000,000 of Boston United Gas Bonds (first series) issued, but \$700,000 (instead of \$1,000,000, as previously stated) were, under the trust deeds, based on improvements; and the remaining \$1,300,000 were turned over to the holders of the obligation for \$4,500,000 in payment for the same.†

Thus ended this remarkable campaign against the companies. The mayor appeared to be successful at every point. Under his leadership the price of gas had been made lower than prevailed in any other large American city; public opinion had been created and directed; the policy of the State in regard to competing gas companies had been reversed; \$3,000,000 of fictitious capitalization had been squeezed out of a great corporation by legislative fiat; and the legislature, for the second time in generations, had resorted to the heroic remedy of undertaking to revoke the charter of an active corporation.

In a future article I shall attempt to give some idea of what these apparent gains cost the public.

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* Chapter 474, Acts of 1893. Forty-four lighting bills had been introduced during the session. In addition to the above act relating to the Bay State Company, but two other acts were passed; namely, an unopposed amendment to the general municipal lighting act and a local electric lighting act.

† Compare this Journal for October, 1898, pp. 18, 27, of the current volume.